

CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

RELEASE NO. 97-3-S

TO: ALL INTERESTED PARTIES

SUBJECT: Impact of Section 18(b)(4)(C) of the National Securities Markets Improvement Act of 1996 upon Holding Companies of Banks and Savings Associations

General Background:

Questions have been raised concerning the impact of the National Securities Markets Improvement Act of 1996 ("NSMIA") that was signed into law on October 11, 1996. This Release will be limited to the impact of Section 18(b)(4)(C) of NSMIA upon Holding Companies of Banks and Savings Associations under the Michigan Uniform Securities Act, 1964 PA 265, as amended (the "Michigan Act").

Section 18(b)(4)(C) provides that "a security is a "covered security" with respect to a transaction that is exempt from registration . . . pursuant to . . . Section 3(a) [of the Securities Act of 1933, as amended][the "33 Act"], other than the offer or sale of a security that is exempt from registration pursuant to Paragraph (4) or (11) of such section, except that a municipal security that is exempt from such registration pursuant to Paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located."

Section 3(a)(4) of the 33 Act provides an exemption for "any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual..."

Section 3(a)(11) of the 33 Act provides an exemption for "any security which is a part of an issue offered and sold only to persons resident with a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

Section 3(a)(2) of the 33 Act provides an exemption for "any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories"

Action or Interpretation:

As indicated above, Section 18(b)(4)(C) of NSMIA treats as "covered securities" those securities that are part of a transaction that is exempt from federal registration requirements under Section 3(a) of the 33 Act, with the 3 exceptions noted previously. Michigan will continue to have exclusive registration authority over intrastate offerings exempt under Section 3(a)(11) of the 33 Act and over the state provisions that require the registration or qualification of securities issued by eleemosynary organizations which are exempt from registration under Section 3(a)(4) of the 33 Act.

Also, securities issued by municipalities that are exempt from registration under Section 3(a)(2) of the 33 Act are not covered securities "with respect to the offer and sale of the security in the State in which the issuer of the security is located." Thus, a municipality located in Michigan would have to comply with any registration provision under the laws of Michigan, but would be treated as a "covered security" in all other states in which it is offered or sold. Since securities issued by municipalities located within Michigan are exempt pursuant to Section 402(a)(1) of the Michigan Act, this provision of the 33 Act would have no effect upon the exemption provided by Section 402(a)(1) of the Michigan Act.

Prior to the enactment of NSMIA, holding companies of banks and of savings associations were required to register in Michigan. However, since Section 18(b)(4)(C) of NSMIA has preempted the Michigan Act with respect to securities exempt under Section 3(a)(12) of the 33 Act, Michigan can no longer require a holding company of a bank or a holding company of a savings association to register.

Section 3(a)(12) of the 33 Act provides an exemption for "any equity security issued in connection with the acquisition by a holding company of a bank under section 3(a) of the Bank Holding Company Act of 1956 or a savings association under section 10(e) of the Home Owners' Loan Act, if:

- (A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of a bank or savings association;

- (B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;
- (C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings institution prior to the transaction, other than as may be required by law; and
- (D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

As a consequence of Section 18(b)(4)(C) of NSMIA, holding companies of banks or savings associations are exempt from having to register under the Michigan Act. They will however, have to make notice filings and pay fees. Section 18(c)(2) of NSMIA provides that "nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission "solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee."

As a result of the foregoing, holding companies of banks and savings associations must provide notice that they are relying on the exemption provided by Section 18(b)(4)(C), must file a consent to service of process and must pay a fee. (A minimum fee of \$100 and a maximum fee of \$1,250, based on the total amount to be sold, must continue to be paid.)

Authority: Section 18(b)(4)(C) of the National Securities Markets Improvement Act of 1996.

Signed by Craig B. Newell, Acting Director
Corporation, Securities and Land Development Bureau

Dated: April 22, 1997